

OGC Has Reviewed

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EXTRACTS FROM THE MEMORANDUM OF THE OFFICE OF THE GENERAL COUNSEL

"The Comptroller General has frequently ruled that employment of a retired officer on a fee basis, completely unrelated to any measure of time, as a consultant in an advisory capacity, does not constitute a holding of a 'civilian office or position within the contemplation of the dual compensation or office statutes.' The criteria...are based upon the proposition that where the nature of the duties required is purely advisory, generally performed at infrequent intervals, and the compensation payable therefor is upon a fee basis as distinguished from a purely time basis, the holding of an office or position is not involved. This general principle would apply to any or all of the three classes of retired personnel with which this Agency deals."

"At this juncture, however, a caveat is in order. No one of the enumerated criteria is considered determinative of the issue and the absence of any one of them may be sufficient to take a case out of the rule (28 Comp. Gen. 381, December 29, 1948). The utilization of a person may be such that what was originally intended as a fee use, i.e., no admeasurement of time, may evolve into a time use. If a conversion of this sort occurs, then a dual office or compensation problem exists. As you are undoubtedly aware, the category of contract consultants throughout the Government has been a matter of continuing interest to the Comptroller General. It is natural, therefore, that the mere fact of employment of annuitants with other establishments of the Government is sufficient to cause those officials in charge of the Annuity Docks to suspend the annuities of the individuals concerned for the reflected period of employment."

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